RECENT IMPORTANT DECISIONS

CONSTITUTIONAL LAW—TAXATION—PUBLIC PURPOSE.—Rev. St. Me. 1903, c. 4, sec. 87, authorized any municipality to establish a permanent wood, coal, and fuel yard for the purpose of selling wood, coal, and fuel to its inhabitants at cost. *Held,* not to violate the Fourteenth Amendment. *Jones* v. *City of Portland* (U. S., 1917), 38 Sup. Ct. Rep. 112.

When the act was attacked as a violation of the state constitution, the Maine court declared such an establishment to be a public purpose. *Laughlin* v. *City of Portland,* 111 Me. 486, 51 L. R. A. (N. S.) 1143, Ann. Cas. 1916 C, 734. Yet in regard to eminent domain, generating and transmitting electricity had been held not a public use. *Brown* v. *Gerald,* 100 Me. 351. *Contra, Jones* v. *N. Ga. Electric Co.,* 125 Ga. 618. The reasoning used in the *Laughlin Case, supra,* is followed now both in considering heat to be "as indispensable to the health and comfort of the people as light or water" and in seeing no ground for objection in the means used to distribute heat. The contrary view would seem to assert that the means used is of vital importance. *Opinion of the Justices,* 155 Mass. 598; *Opinion of the Justices,* 182 Mass. 605; *Opinion of the Justices,* 211 Mass. 624; *Maker* v. *Grand Rapids,* 142 Mich. 687. Decisions as to what is a public use in questions about eminent domain are involved in the same conflict. *Minn. Canal & Power Co.* v. *Koochiching Co.,* 97 Minn. 429; *Rockingham Co. Light & Power Co.* v. *Hobbs,* 72 N. H. 531. It also occurs in regard to occupations affected with a public interest, a matter which has been in dispute since *Munn* v. *Illinois,* 94 U. S. 113. Each bears witness to the influence of developing public needs and a developing public opinion. 17 YALE L. J. 162. The line of development is perhaps indicated by recent decisions allowing a municipality to furnish ice and to supply natural gas for heating. *Holton* v. *Camilla,* 134 Ga. 560; *State* v. *Toledo,* 48 Ohio St. 112. Municipal theaters and moving picture theaters have not yet been allowed. *State* v. *Lynch,* 88 Ohio St. 71; 12 MICH. L. R. 132; *Egan* v. *San Francisco,* 165 Cal. 576.

CONSTITUTIONAL LAW—TRADING STAMP STATUTES.—Defendant objected to the constitutionality of a statute under which he was indicted for issuing, without license, trading stamps to merchants, to use with the sale of goods, entitling the purchaser receiving the same with such sale to procure, free of charge, premiums from a special stock selected by the defendant's company. The license fee was assumed prohibitive by the court. *Held,* constitutional both as to Federal and State Constitutions. *State* v. *Wilson* (Kan., 1917), 168 Pac. 679.

Some form of repressive legislation against trading stamps has been undertaken in a majority of the states, and the Parliament of Canada has prohibited their use. *State* v. *Wilson, supra.* In a majority of jurisdictions these statutes have been held unconstitutional. *Ex parte Drexel,* 147 Cal. 763; 2 L. R. A. (N. S.) 588; *State* v. *Sperry and H. Co.,* 94 Nebr. 785;

49 L. R. A. (N. S.) 1123; *People* v. *Sperry and H. Co.* (Mich., 1917), 164 N. W. 503. The principal ground of these decisions is that such statutes are an unjust suppression of a legitimate method of advertising, and not of a scheme involving elements of lottery. Trading stamp statutes have been upheld in *Dist. of Columbia* v. *Kraft,* 35 App. D. C., 253; 30 L. R. A. (N. S.) 957; *State* v. *Pitney,* 80 Wash. 699; overruling *Leonard* v. *Bassindale,* 46 Wash. 301; *Rast* v. *Van Deman and Lewis Co.,* 240 U. S. 342, L. R. A. 1917A 421; Ann. Cases 1917B 455; *Tanner* v. *Little Id.* 369; *Pitney* v. *Washington, Id.* 387; and *State* v. *Wilson* (*supra*). Most of the more recent decisions have upheld these statutes primarily on the contention that it was not unreasonable to say that the trading stamp business involves elements of lottery, and that it is not merely advertising. "Advertising is identification and description, apprising of quality and place. It has no other object than to draw attention to the article to be sold." *Tanner* v. *Little* (*supra*). It is to be noted that there is some diversity among the statutes which may justify some of the diversity in the decisions. In *Humes* v. *City of Little Rock,* 138 Fed. 929, the court said the case of *Lansburgh* v. *District of Columbia,* 11 App. Cases 512, holding the statute there constitutional, was clearly distinguishable. "The Act of Congress governing the District prescribes what is meant by gift enterprises and its definition precisely covers the trading stamp concern. That definition is not binding here * * * Then too the court in that case lays stress on the fact that the holder of the stamps could get nothing unless he accumulated stamps representing purchases to the extent of $99, and as few did that it was held the uncertainty of ever getting anything on the stamps introduced an element of chance. No such element exists in the case at bar." In *State* v. *Ramseyer,* 73 N. H. 31, the court said in distinguishing the case before it: "The case of *Humes* v. *Fort Smith,* 93 Fed. Rep. 857, relates to a regulation, not the prohibition, of the stamp business." See also *People* v. *Sperry and H. Co.,* (*supra*). Also ordinances relating to trading stamps will more readily be held unconstitutional under the more strict construction by the courts of the terms of the grants of powers to municipalities than of the terms of the grant of powers to the legislature in the state constitution. *State* v. *Wilson, supra.*

CORPORATIONS — FOREIGN CORPORATIONS — DOING BUSINESS WITHIN THE STATE—CORPORATE FRANCHISE TAX.—The Revised Statutes of Texas, 1911, imposed a franchise tax on any foreign corporation, as a condition to its right to do business in Texas, of a given percentage of all of the corporation's capital and surplus, representing all its property wherever situated, and all of its business both intrastate and interstate, thereby placing a tax on the corporation's property beyond the jurisdiction of the state for taxation purposes. *Held,* the statute was unconstitutional because it imposed a burden on interstate commerce and because of want of due process. *Looney* v. *Crane Co.,* (1917); 38 Sup. Ct. 85.

It is within the power of the state to levy an excise tax for the privilege of permitting a foreign corporation to exercise its franchise within the state. *Maine* v. *Grand Trunk Ry.,* 142 U. S. 228. Nor is there any limitation on